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MOHAMMED YOUSEF CHAUDHRY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MOHAMMED YOUSEF CHAUDHRY,  
ALI H. KHAN,

Defendants.

No. CR 03-40210

**DEFENDANT CHAUDHRY'S  
RESPONSE TO GOVERNMENT  
MOTION TO EXCLUDE PUBLIC  
AUTHORITY DEFENSE**

Pre-Trial Conference:  
September 11, 2007  
Dept.: Courtroom 3

Pursuant to Rule 12.3, the government seeks to preclude Mr. Chaudhry from asserting the affirmative defense of public authority. Defendant does not oppose that request because he does not intend to raise that affirmative defense. However, the government appears to request more than that relief, more relief than it is entitled to seek under Rule 12.3. Defendant opposes the government's motion insofar as it seeks to exclude evidence relating to Clarence Walker's involvement with Mr. Chaudhry because such evidence is relevant to Mr. Chaudhry's knowledge and intent.

CHAUDHRY'S OPP. TO GOV MOTION TO  
EXCLUDE PUBLIC AUTHORITY DEFENSE

1 The government anticipates evidence that Clarence Walker, an  
2 Internal Revenue Service officer (and a former defendant in this  
3 court), provided advice to Mr. Chaudhry on the filing of Currency  
4 Transaction Reports ("CTRs").

5 The government misconstrues defendant's intended defense.  
6 Defendant has never intended to claim that he was "exercising"  
7 public authority, which is an affirmative defense if proven true.  
8 Rather, defendant intends to make the government meet its heavy  
9 burden of proving beyond a reasonable doubt that he acted with  
10 both knowledge of the currency transaction reporting requirements,  
11 and with the intention of evading them.

12 Mr. Chaudhry anticipates the evidence will show that he  
13 received "advice" from Mr. Walker, an IRS agent with  
14 responsibilities over currency reporting issues, about reporting  
15 requirements. The provision of that advice by an IRS agent is  
16 relevant to Mr. Chaudhry's knowledge (or lack thereof) and his  
17 intent (or lack thereof). The government has the burden of  
18 proving both that Mr. Chaudhry's knew of the relevant currency  
19 transaction reporting requirements, and that he acted with the  
20 intention of evading them. Evidence tending to logically to  
21 disprove either of these elements is relevant and material to Mr.  
22 Chaudhry's defense of the charges against him at this trial.  
23 Excluding evidence relating to Mr. Walker's interactions with Mr.  
24 Chaudhry would therefore relieve the government of its heavy  
25 burden of proving these essential elements beyond a reasonable  
26 doubt, in violation of his constitutional rights to present a  
27 defense and to due process of law.

1 Accordingly, Rule 12.3 simply has no application to the facts  
2 of this case. Rule 12.3 provides, in part:

3 If a defendant intends to assert a defense of  
4 actual or believed exercise of public  
5 authority on behalf of a law enforcement  
6 agency or federal intelligence agency at the  
time of the alleged offense, the defendant  
must so notify [the prosecution]

(Emphasis added).

7 On its face, the rule only applies if a defendant intends to  
8 assert that when he was acting, or believed he was acting, as an  
9 agent of the government. Mr. Chaudhry has never intended to  
10 assert that he was acting as a government agent. Accordingly, he  
11 has never intended to seek or rely on the affirmative defense of  
12 public authority, or to request the Ninth Circuit jury instruction  
13 on the same.<sup>1</sup> Rule 12.3 simply does not apply when no affirmative  
14 defense of public authority is sought.

15 If the government's motion seeks only to bar the jury from  
16 being instructed on the affirmative defense of public authority,  
17 and to preclude the defense from arguing that defense in opening  
18 and closing, then defendant does not oppose the government's  
19 motion.

20 However, the government appears to seek more. Its motion  
21 appears to seek relief that goes far beyond that authorized by  
22 Rule 12.3. The government states that if defendant Chaudhry's  
23 "intent is to claim that the defendant acted on the advice and  
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26 <sup>1</sup> "A defendant engages in conduct violative of a criminal  
27 statute at the request of a government enforcement officer, with  
28 the reasonable belief that the defendant is acting as an  
authorized government agent to assist in law enforcement  
activity..." Ninth Circuit Model Criminal Jury Instruction 6.10.

1 counsel of a person he believed to be a legitimate IRS agent, this  
2 defense should be precluded." Gov. Mot. at p. 4. Mr. Chaudhry  
3 may infact seek to argue that he acted on the advice and counsel  
4 of an IRS agent, depending how the evidence comes in. But that  
5 is a far different trial strategy than claiming that his acts were  
6 an "exercise of public authority on behalf of a law enforcement  
7 agency." Rule 12.3. Mr. Chaudhry only intends to offer that  
8 evidence as relevant to his knowledge and intent. He must not be  
9 barred from doing so.

10 The government's motion should be denied to the extent it  
11 seeks anything beyond disallowing jury instruction and argument on  
12 the affirmative defense of public authority. Mr. Chaudhry' is not  
13 raising that affirmative defense, but he is entitled to present  
14 evidence relevant and probative of his knowledge and intent.

15 DATED: September 2, 2007

16 Respectfully submitted,

17  
18 /S/Erik Babcock

19 ERIK BABCOCK

20 LYNN KESLAR

21 Attorneys for Defendant

22 MOHAMMED YOUSEF CHAUDHRY  
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